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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

STATION CASINOS, INC.

- ☒ Affects this Debtor  
☐ Affects all Debtors  
☐ Affects Northern NV Acquisitions, LLC  
☐ Affects Reno Land Holdings, LLC  
☐ Affects River Central, LLC  
☐ Affects Tropicana Station, LLC  
☐ Affects FCP Holding, Inc.  
☐ Affects FCP Voteco, LLC  
☐ Affects Fertitta Partners LLC  
☐ Affects FCP MezzCo Parent, LLC  
☐ Affects FCP MezzCo Parent Sub, LLC  
☐ Affects FCP MezzCo Borrower VII, LLC  
☐ Affects FCP MezzCo Borrower VI, LLC  
☐ Affects FCP MezzCo Borrower V, LLC  
☐ Affects FCP MezzCo Borrower IV, LLC  
☐ Affects FCP MezzCo Borrower III, LLC  
☐ Affects FCP MezzCo Borrower II, LLC  
☐ Affects FCP MezzCo Borrower I, LLC  
☒ Affects FCP PropCo, LLC

Chapter 11

Case No. BK-09-52477  
Jointly Administered  
BK 09-52470 through BK 09-52487

**JOINT MOTION OF STATION  
CASINOS, INC. AND FCP PROPCO,  
LLC PURSUANT TO 11 U.S.C. §§  
105(a), 363(b)(1), 365(d)(3) AND  
365(d)(4)(B)(ii) AND FED. R. BANKR.  
9019 FOR ENTRY OF AN ORDER  
APPROVING MASTER LEASE  
COMPROMISE AGREEMENT**

**[Order Shortening Time Requested]**

1 TO THE HONORABLE GREGG W. ZIVE, UNITED STATES BANKRUPTCY JUDGE,  
 2 OFFICE OF THE UNITED STATES TRUSTEE AND ALL PARTIES IN INTEREST:

3 Station Casinos, Inc. ("SCI") and FCP PropCo LLC ("PropCo", and together with  
 4 SCI, the "Parties" or the "Debtors") submit this motion (the "Motion") pursuant to sections  
 5 105(a), 363(b)(1), 365(d)(3) and 365(d)(4)(B)(ii) of title 11 of the United States Code, 11 U.S.C.  
 6 §§ 101 *et seq.* (the "Bankruptcy Code"), and Rule 9019 of the Federal Rules of Bankruptcy  
 7 Procedure (the "Bankruptcy Rules") for an order approving the Master Lease Compromise  
 8 Agreement between SCI and PropCo (the "Compromise Agreement")<sup>1</sup> and authorizing SCI and  
 9 PropCo to abide by the terms of the Compromise Agreement and perform their respective  
 10 obligations thereunder. The terms of the Compromise Agreement, as well as the factual  
 11 background and process by which SCI and PropCo arrived at the Compromise Agreement, are  
 12 summarized below. In addition, concurrently herewith and in support of the Motion, PropCo has  
 13 submitted the Declaration of Robert Kors (the "Kors Declaration") and SCI has submitted the  
 14 Declaration of Richard Haskins (the "Haskins Declaration"). In support of the Motion, the  
 15 Parties respectfully represent as follows:

16 **I. Jurisdiction.**

17 1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C.  
 18 §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

19 **II. Statutory Basis For Relief Requested.**

20 2. The statutory bases for the relief requested in the Motion are contained in  
 21 Bankruptcy Code sections 105(a), 363(b)(1), 365(d)(3), and 365(d)(4)(B)(ii). In addition, the  
 22 Compromise Agreement constitutes a proposed compromise or settlement under Bankruptcy  
 23 Rule 9019(a).

24  
 25  
 26  
 27  
 28 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Compromise Agreement, a copy of which is attached to the Appendix of Exhibits filed concurrently herewith as Exhibit A.

1       **III.    The Master Lease: Summary of the Dispute and the Terms of the Compromise.**

2               **a.   Background Regarding The Master Lease.**

3               3.       As described in more detail in section IV below, PropCo, as lessor, and  
4       SCI, as tenant, are parties to a Master Lease under which SCI leases from PropCo the real  
5       property and improvements associated with Boulder Station Hotel & Casino, Red Rock Casino  
6       Resort Spa, Palace Station Hotel & Casino and Sunset Station Hotel & Casino (collectively, the  
7       “Leased Hotels”). The Leased Hotels, in turn, are operated by SCI and certain of its non-debtor  
8       operating subsidiaries (defined below as the Operating Subsidiaries).

9               4.       The Master Lease provides for monthly rental payments from SCI to  
10       PropCo in amounts that greatly exceed the amounts that PropCo requires to meet its ordinary  
11       debt service obligations and any other expenses not covered by SCI under the “triple net”  
12       provisions in the Master Lease. Subject to certain conditions, the governing credit documents  
13       permitted some of that surplus cash to be upstreamed as dividends to the mezzanine entities that  
14       own equity up the PropCo “stack” to service their debt, with additional amounts then ultimately  
15       “flowing back” to SCI as the ultimate parent entity.

16              5.       Due to the severe recession and its impact on the Las Vegas economy the  
17       financial performance of the Leased Hotels (as measured by certain specified financial metrics)  
18       deteriorated to the point that the amount of the surplus cash that was paid “up” through the  
19       PropCo stack and ultimately “flowed back” to SCI was restricted. Upon the event of default that  
20       was triggered when these chapter 11 cases were filed, the rights of the mezzanine lenders to any  
21       dividends, as well as the rights of SCI to any “flow back”, were cut off altogether, resulting in all  
22       of the surplus cash being “trapped” at PropCo.

23              6.       After these Cases were filed, the Debtors requested and obtained Court  
24       approval of consensual cash collateral arrangements that authorized: (a) SCI to continue to make  
25       rent payments to PropCo due under the Master Lease, subject to “rolling” budget approval by the  
26       Prepetition Lenders (as defined below); and (b) PropCo to continue to service its mortgage debt  
27       (as adequate protection for its Mortgage Lenders (as defined below)), to pay certain other  
28       expenses and to otherwise accumulate the “trapped” cash in accounts pledged to the Mortgage

1 Lenders, also subject to “rolling” budget approval by the Mortgage Lenders.

2           7. Notwithstanding the Court’s approval of the cash collateral arrangements,  
3 the issues surrounding the Master Lease and the resulting flow of funds from SCI to PropCo  
4 have continued to be a point of contention for all of the major stakeholders in these cases. In  
5 connection with the cash collateral hearings, both the Official Committee of Unsecured Creditors  
6 and the so-called Independent Lenders raised strenuous objections to the “cash trap” and the  
7 resulting loss of “flow back” to SCI. In addition, the Independent Lenders filed a motion seeking  
8 appointment of an examiner to investigate, among other things, the workings of the Master Lease  
9 and the propriety of any ongoing rental payments thereunder. In addition, the Debtors repeatedly  
10 have acknowledged that the Master Lease arrangements and the issues arising therefrom are  
11 extremely important pieces of the puzzle that must be addressed in the context of any overall  
12 restructuring of the Debtors.<sup>2</sup>

13           8. The need to address the Master Lease issues became even more acute in  
14 the middle of October, when SCI’s Prepetition Lenders advised SCI that the Prepetition Lenders  
15 would not approve a cash collateral budget that provided for the payment of rent under the  
16 Master Lease beginning in December of 2009.

17           9. The Master Lease, and the payment of rent thereunder, has also been the  
18 focus of PropCo’s Mortgage Lenders, who repeatedly have asserted that the relationship between  
19 PropCo and SCI was contractually structured as a lessor/lessee relationship and that SCI was  
20 facing a Hobson’s choice, because of the “cum onere” rule, in December whereby SCI would be  
21 forced to decide to either pay the full amount of the scheduled rent under the Master Lease or  
22 reject the Master Lease in its entirety.

23           10. SCI thus was faced with three potential alternatives to consider: (a)  
24 moving for non-consensual use of cash collateral in order to pay the full Master Lease rent  
25 notwithstanding the objection of the Prepetition Lenders – which would not only trigger a  
26 difficult contested cash collateral fight but would also put the forbearance agreement whereby

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27  
28 <sup>2</sup> In fact, SCI requested that its Special Litigation Committee analyze the Master Lease and SCI’s  
alternatives with respect thereto.

1 the Prepetition Lenders thus far have agreed to forbear from forcing SCI's non-debtor operating  
2 subsidiaries to file for bankruptcy into a precarious position that likely would require SCI's non-  
3 debtor operating subsidiaries to file for bankruptcy protection; (b) rejection of the Master Lease  
4 as a result of the inability to perform thereunder, accompanied by the surrender of the Leased  
5 Hotels; or (c) engage in discussions with PropCo to try to reach an agreement that would not  
6 only protect the existing rights of both Parties under the Master Lease, but would also include the  
7 Parties agreement to certain rent deferrals by PropCo in exchange for SCI's agreement to provide  
8 certain transition services in the event the Master Lease ultimately is rejected, thereby providing  
9 the Parties with much greater clarity regarding the possibility of a future rejection while at the  
10 same time avoiding the need for a premature and precipitous rejection of the Master Lease now.

11 11. Because the first two alternatives – fighting for non-consensual use of  
12 cash collateral or immediate rejection of the Master Lease and the resulting implications for the  
13 Leased Hotels – each carry significant risks and uncertainties for both SCI and PropCo, SCI and  
14 PropCo instead decided to focus on the third alternative of exploring a negotiated solution to the  
15 near-term issues facing the Parties as the December rent payment approaches. In addition, the  
16 Parties believe that the “controlled transition” provided for in the Compromise Agreement in the  
17 event of a rejection of the Master Lease will also address many, if not all, of the concerns that the  
18 gaming authorities would have regarding rejection and therefore should minimize or eliminate  
19 the need for any regulatory involvement in the process.

20 12. Although SCI and PropCo shared the desire to prevent the damage that  
21 would be suffered by their respective estates if they were unable to arrive at a mutually  
22 acceptable solution, it was also clear to SCI and PropCo that they would be sitting on opposite  
23 sides of the negotiating table in any discussions regarding the Master Lease. In order to ensure  
24 that those negotiations would occur at arms length and with due consideration for the competing  
25 interests of the SCI and PropCo estates, responsibility for the representation of PropCo's  
26 interests in those negotiations was assumed by the two independent members of PropCo's board,  
27 Messrs. Robert White and Robert Kors (the “PropCo Independent Directors”), who were advised  
28 by PropCo's separate counsel, Gibson, Dunn & Crutcher LLP.

1                   13.     Shortly after the Prepetition Lenders notified SCI that they would not  
2 consent to payment of the December rent under the Master Lease, SCI and PropCo, through the  
3 PropCo Independent Directors, commenced intensive negotiations to try to structure an  
4 agreement that would (a) allow for the continued operation of the Leased Hotels in a manner that  
5 would appropriately protect and preserve the value of those operations, (b) provide both estates  
6 with some appropriate relief from provisions of the Master Lease that have become problematic  
7 in the Debtors' current environment, and (c) provide the Parties with a reasonable amount of  
8 time to try to solve not only the Master Lease issues, but the overall restructuring puzzle as well.

9                   14.     Those negotiations slowed for a short period of time when SCI's  
10 Prepetition Lenders and PropCo's Mortgage Lenders advised the Debtors that the two lender  
11 groups were going to engage in direct negotiations themselves to try to resolve the December  
12 rent dilemma and the other Master Lease issues. But when it became clear to SCI and PropCo  
13 that those lender negotiations were not going to produce a solution, SCI and PropCo re-convened  
14 their negotiations. The Compromise Agreement is the end product of those negotiations, and  
15 SCI and PropCo believe that the Compromise Agreement satisfies the objectives the Parties had  
16 coming into the negotiations.

17                   **b. Risks To The Parties In The Absence Of The Compromise Agreement.**

18                   15.     PropCo would be exposed to significant potential risk and uncertainty  
19 upon a precipitous or uncontrolled rejection of the Master Lease. Under the existing  
20 documentation, PropCo owns or ground leases the real property and improvements constituting  
21 the Leased Hotels, holds a security interest in certain tangible personal property (essentially all  
22 furniture, fixtures and equipment) used at the Leased Hotels and, pursuant to the License  
23 Agreement (defined below), has temporary use of certain trademarks used at the Leased Hotels,  
24 the customer lists for the Leased Hotels and the reservation system used by the Leased Hotels.  
25 *However, neither SCI nor the Operating Subsidiaries have any contractual obligation to operate*  
26 *the Leased Hotels after rejection of the Master Lease.*

27                   16.     PropCo is not a licensed gaming company and cannot conduct gaming  
28 operations in the Leased Hotels without being licensed. Furthermore, as a passive landlord,

1 PropCo currently lacks the infrastructure and employees necessary to run the Leased Hotels as  
2 non-gaming hotels, let alone as major casinos. If SCI were to simply reject the Master Lease and  
3 SCI and the Operating Subsidiaries were to cease operation of the Leased Hotels, PropCo would  
4 need to engage an outside casino management company on very short notice in order to try to  
5 operate the Leased Hotels. Furthermore, any rejection of the Master Lease by SCI likely would  
6 be accompanied by a contemporaneous rejection of the License Agreement, which would  
7 deprive PropCo of use of the trademarks, customer lists, and the reservation system, at a  
8 minimum. PropCo would be forced to immediately remove virtually all branding covered by the  
9 License Agreement, which could range from the facility names to the names of restaurants and  
10 amenities to ashtrays and gaming chips, and would be deprived of its most important marketing  
11 tools. In short, PropCo likely would be unable to operate the Leased Hotels at all in the short  
12 term, and any plans for PropCo to operate the Leased Hotels in the future likely would require  
13 that the Leased Hotels be re-opened as rebranded, stand alone hotels, entirely unrelated to the  
14 Station brand and the Station marketing and operating systems.

15           17. SCI similarly would be exposed to significant risks and uncertainty if  
16 forced to reject the Master Lease and License Agreement and jettison the Leased Hotels  
17 prematurely. Among other things, SCI could experience a profound reputational loss from an  
18 uncontrolled rejection of the Master Lease, through the indirect impacts of the abrupt rebranding  
19 of the Leased Hotels, disruption of the operations of those properties to accommodate the change  
20 in control, and likely customer confusion resulting from the turmoil. In addition, SCI continues  
21 to believe at this time that the value of the Station family of entities will be best preserved for all  
22 stakeholders if the Leased Hotels are maintained within the family, but a forced rejection of the  
23 Master Lease could prevent SCI from achieving that result.

24           18. In addition, a premature and uncontrolled rejection of the Master Lease  
25 would also create the risk of regulatory intervention by the gaming authorities if that rejection  
26 threatened the continued operation of the Leased Hotels. In contrast, the transition services  
27 provided for in the Compromise Agreement are designed in part to create a smooth transition  
28 that will alleviate many, if not all, of the concerns that the gaming authorities would otherwise



1 have in this scenario.

2 19. In the face of potentially significant downside for both Parties, SCI and  
3 PropCo negotiated extensively and with urgency to try to reach an agreement in time to seek  
4 Court approval prior to the due date for the December rent payment under the Master Lease.  
5 Multiple proposals and drafts of the Compromise Agreement were volleyed back and forth  
6 between the Parties. Ultimately, SCI and PropCo reached a compromise that each believes  
7 yields a better result for its respective estate than would the alternative scenarios of an SCI cash  
8 collateral battle with the Prepetition Lenders or an uncontrolled rejection of the Master Lease and  
9 License Agreement.

10 **c. Summary Of The Compromise Agreement.**

11 20. The Compromise Agreement includes, among others, the following  
12 mutual accommodations<sup>3</sup>:

- 13 • The rent payable in cash to PropCo shall be reduced for December 2009,  
14 January 2010 and February 2010 from approximately \$21,449,000 per  
15 month to an amount equal to EBITDAR<sup>4</sup> for the Leased Hotels in the prior  
16 calendar month minus up to \$1,600,000 per month (which amount was  
17 calculated to enable SCI to be reimbursed by PropCo for capital  
18 expenditures expended by SCI on the Leased Hotels in excess of the  
19 amount of capital expenditures that SCI is contractually required to make  
20 pursuant to the Master Lease) (subject to a floor based upon 120% of the  
21 aggregate amount of adequate protection payments due to the Mortgage  
22 Lenders (defined below) plus all other budgeted amounts paid by PropCo  
23 (as so calculated, the “Reduced Rent”). SCI estimates that the Reduced  
24 Rent for the 3-month period covered by the Compromise Agreement will  
25 average approximately \$13,777,000 per month, for an average monthly  
26 reduction of just under \$7,700,000 from the full scheduled rent amount.
- 27 • The difference between Reduced Rent and contract rent under the Master  
28 Lease (such difference, the “Deferred Rent”) will be either (a) paid in cash  
on an administrative basis if the Master Lease is ultimately assumed by  
SCI, or (b) added to the prepetition rejection damages claim if the Master  
Lease is ultimately rejected by SCI.

3 The description of the Compromise Agreement contained in the Motion is intended as a summary only and is qualified in its entirety by the actual terms of the Compromise Agreement.

4 “EBITDAR” means Earnings (or Net Income) Before Interest, Taxes, Depreciation, Amortization and Rent.



- 1           • Prior to assumption or rejection of the Master Lease, SCI will continue to  
2           perform all of its other obligations under the Master Lease, with SCI's  
3           obligation to pay the Reduced Rent under the Compromise Agreement  
4           constituting an administrative claim against SCI, payable in accordance  
5           with the terms of the Compromise Agreement.
- 6           • Upon rejection of the Master Lease, PropCo will hold an allowed, partially  
7           secured prepetition claim against SCI for rejection damages equal to the  
8           amount of Deferred Rent plus the amount of PropCo's statutory lease  
9           rejection claim in the full amount of \$647,000,000. This amount is the full  
10          amount of an allowed lease rejection claim, computed using the majority  
11          rule, to determine the statutory cap in respect of the Master Lease.
- 12          • Because the statutory lease rejection claim cap is lower than the nominal  
13          claim for rent under the Master Lease both before and after credit for the  
14          value of foreclosed collateral, the amount of the lease rejection damage  
15          claim of \$647,000,000 will not be reduced by the surrender of any of the  
16          collateral securing the lease obligations, but the claim will be rendered  
17          fully unsecured upon the transfer of such collateral to PropCo.
- 18          • SCI and the Operating Subsidiaries have agreed to provide the following  
19          transition services after, and notwithstanding, any future rejection of the  
20          Master Lease and the License Agreement:
  - 21              ○ SCI and the Operating Subsidiaries shall continue to operate the  
22              Leased Hotels under their own gaming licenses on an expense  
23              reimbursement and fee-for-service basis for a period of up to 150  
24              days post-rejection. During this period, the Leased Hotels will be  
25              operated as if no rejection of the Master Lease or License  
26              Agreement had occurred, provided that SCI and the Operating  
27              Subsidiaries will not have any financial obligations to PropCo  
28              under the Master Lease.
  - SCI and the Operating Subsidiaries shall provide reasonably  
            requested non-confidential and non-competitive information to  
            PropCo and any replacement manager for the Leased Hotels.
  - SCI and the Operating Subsidiaries will provide a reasonable  
            period of time after they cease providing transition services for  
            PropCo to rebrand the Leased Hotels to eliminate all mentions of  
            the name "Station."
  - SCI and the Operating Subsidiaries agree that, pending transfer to  
            PropCo of all collateral granted by SCI and the Operating  
            Subsidiaries to secure the Master Lease and all other personalty to  
            be sold to PropCo under the Compromise Agreement, all such  
            personal property will remain at the Leased Hotels and be available  
            for use in their operation, and, subject to its obligations regarding

re-branding, PropCo will have a license to use all such collateral in the operation of the Leased Hotels after rejection and until transfer of title is completed, including after the termination of other transition services.

- Upon the occurrence of certain conditions, SCI and the Operating Subsidiaries will cooperate in a consensual foreclosure of PropCo's liens on such collateral and will sell outright certain tangible and intangible personal property, including the names Red Rock, Palace, Boulder and Sunset, that is not subject to a lien to PropCo.
- PropCo will receive the full benefit of the License Agreement during the transition period, including delivery of the list of SCI customers that predominantly play at a Leased Hotel, and PropCo agrees that, subject to such performance, any monetary claim for rejection damages under the License Agreement shall be a general unsecured claim. PropCo will, however, reserve any Bankruptcy Code section 365(n) rights it may have as licensee under the License Agreement.

21. The Compromise Agreement provides interim relief with regard to rent for OpCo and provides a floor for transition services for PropCo, while also providing some certainty regarding the nature and extent of claims arising in connection with any future rejection of the Master Lease and License Agreement. The Compromise Agreement otherwise leaves PropCo and SCI's current legal positions unaffected. PropCo and its successor/assigns (including the PropCo Mortgage Lender) will continue to have the ability to argue (if such arguments exist) for additional transition services under the agreements between PropCo and SCI or under otherwise applicable law, while leaving SCI free to argue that no additional transition services are required to be provided to PropCo.

22. All of the elements of the compromise enumerated above are more fully set forth in the Compromise Agreement, which is incorporated herein by reference. In the event of any inconsistencies, the terms of the Compromise Agreement shall control.

#### **IV. Summary of Relevant Facts.**

23. The Leased Hotels: SCI and its wholly owned subsidiaries Boulder Station, Inc. ("Boulder Station"), Charleston Station, LLC ("Charleston Station"), Palace Station Hotel & Casino, Inc. ("Palace Station") and Sunset Station, Inc. ("Sunset Station, and

collectively with Boulder Station, Charleston Station and Palace Station, the “Operating Subsidiaries”) operate the Leased Hotels.

24. The Master Lease: PropCo, as landlord, and SCI, as tenant, entered into that certain Master Lease, dated as of November 7, 2007 (as amended as of the Petition Date, the “Master Lease”),<sup>5</sup> under which SCI leases the real property and improvements occupied by the Leased Hotels. Payments to be made by SCI to PropCo under the Master Lease are due on the day (the “Rent Payment Date”) that is the third (3<sup>rd</sup>) business day preceding the fifteenth (15<sup>th</sup>) day of each calendar month. Such rent payments cover the period from the fifteenth (15<sup>th</sup>) day of the month in which such rent payment is made through the fourteenth (14<sup>th</sup>) day of the next month (the “Rental Period”).

25. The Stipulations Extending Time Period To Assume Or Reject Nonresidential Real Property Leases: On October 23, 2009, the Parties jointly filed a motion for an order, pursuant to 11 U.S.C. § 365(d)(4), to extend the time to assume or reject various unexpired nonresidential real property leases, including the Master Lease (extending the date to assume or reject the Master Lease through February 23, 2010) and the ground lease under which PropCo is a lessee for a portion of the property associated with Boulder Station (extending the date for PropCo to assume or reject that lease through March 24, 2010). The motions to approve these stipulations are set for hearing on November 20, 2009.

26. The License Agreement: Concurrently with the execution of the Master Lease, SCI and PropCo executed and delivered the License and Reservation Service Agreement (the “License Agreement”)<sup>6</sup>, dated as of November 7, 2007, pursuant to which SCI agreed to provide to PropCo, among other things, certain trademarks (both exclusive and non-exclusive), the use of customer lists and other items identified therein, and the use of SCI’s common reservation system (the “Licensed Assets”). In addition to providing the Licensed Assets, without limiting the agreements contained in the License Agreement, SCI also agreed to provide, under certain circumstances, after termination of the Master Lease: (i) an eighteen month license

<sup>5</sup> A copy of the Master Lease is attached to the Appendix of Exhibits as Exhibit B.

<sup>6</sup> A copy of the License Agreement is attached to the Appendix of Exhibits as Exhibit C.

1 on certain specified trademarks; (ii) non-exclusive use of certain customer lists for advertising  
2 purposes for an eighteen month period; and (iii) non-exclusive use of SCI's common reservation  
3 system for the same eighteen month period.

4 27. The PropCo FF&E Security Agreement From SCI: Section 12.4 of the  
5 Master Lease contains a security agreement, pursuant to which SCI pledged, assigned and  
6 granted PropCo a security interest and an express contractual lien in and to (i) all of the personal  
7 property (including furniture, fixtures, goods, inventory, equipment, furnishings, objects of art,  
8 machinery, appliances, appurtenances and signage together with tools and supplies (including  
9 spare parts inventories) related to the Leased Hotels) owned by SCI as described in the Master  
10 Lease and (ii) the FF&E Reserve Collateral as described in the Master Lease (collectively the  
11 "SCI Lease Collateral").

12 28. The PropCo FF&E Security Agreement From The Sublessees:  
13 Concurrently with the execution of the Master Lease and the License Agreement, PropCo and  
14 the Operating Subsidiaries entered into the Security Agreement (All Furniture, Fixtures and  
15 Equipment) (the "Security Agreement")<sup>7</sup> dated November 7, 2007 granting liens on and security  
16 interests in all of the personal property (including furniture, fixtures, goods, inventory,  
17 equipment, furnishings, objects of art, machinery, appliances, appurtenances and signage  
18 together with tools and supplies (including spare parts inventories) related to the Leased Hotels)  
19 owned by the Operating Subsidiaries as described in such Security Agreement to PropCo to  
20 further secure SCI's obligations to PropCo under the Master Lease (collectively the "Operating  
21 Subsidiaries Lease Collateral").

22 29. The PropCo Cash Collateral Stipulation: On September 9, 2009, the  
23 Bankruptcy Court entered its final order approving the Stipulation And Final Order For (i)  
24 Adequate Protection and (ii) Use Of Cash Collateral With Respect To Secured Loans To FCP  
25 Propco, LLC, (the "PropCo Cash Collateral Stipulation") [Docket No. 295, which stipulation was  
26 entered into between PropCo, SCI, DB and the Mortgage Lenders.

27 \_\_\_\_\_  
28 <sup>7</sup> A copy of the Security Agreement is attached to the Appendix of Exhibits filed concurrently herewith as Exhibit D.

30. The SCI Cash Collateral Stipulation: On October 13, 2009, Bankruptcy Court entered its SCI Final Cash Collateral Order [Docket No. 481].<sup>8</sup> Pursuant to the SCI Final Cash Collateral Order, SCI is required to submit to the Prepetition Lenders on a regular basis a proposed operating budget for the entire Station Group (the “SCI Budget”) for approval by the Prepetition Lenders as a condition to SCI’s ongoing use of cash collateral. The existence at all times of an approved SCI Budget is a condition to SCI’s use of cash collateral under the SCI Cash Collateral Order. If SCI loses consensual use of cash collateral due to, among other things, expiration of the most recently approved SCI Budget, the Prepetition Lenders would have the right to terminate the Forbearance Agreement<sup>9</sup> and could potentially take action to force SCI’s non-debtor operating subsidiaries to file their own bankruptcy cases.

31. The SCI Cash Collateral Budget: In response to SCI’s most recent proposed SCI Budget, the Prepetition Lenders objected to the inclusion of any amount for payment of rent under the Master Lease in December 2009 (for the Rental Period of December 15, 2009 to January 14, 2010). SCI was unable to convince the Prepetition Lenders otherwise and instead was forced to accept the deletion of rent due in December 2009 under the Master Lease from the revised proposed SCI Budget. The revised proposed SCI Budget (which provides no authority to SCI to pay rent due in December 2009 under the Master Lease) was subsequently approved by the Prepetition Lenders and is the Budget under which SCI is currently operating.

32. The Consequential Rejection Of The Master Lease And License Agreement: In light of the refusal of the Prepetition Lenders to consent to SCI’s payment of the rent due in December, 2009 under the Master Lease, SCI notified PropCo that, unless SCI can negotiate a reduction of current cash rent that is satisfactory to the Prepetition Lenders, SCI will

<sup>8</sup> “SCI Final Cash Collateral Order” means the Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, 363, 364 and 552 and Fed. R. Bankr. P. Rule 4001(B), (C) and (D) (i) Authorizing the Debtors to (A) Use Cash Collateral; (B) Obtain Unsecured, Subordinated Post-Petition Financing; (C) Make Loans to Non-Debtor Subsidiaries, (ii) Granting Adequate Protection to Prepetition Secured Parties, and (iii) Granting Related Relief entered on October 13, 2009.

<sup>9</sup> “Forbearance Agreement” means the Second Forbearance Agreement; and Second Amendment to the Credit Agreement dated July 28, 2009, copies of which have previously been filed with this court and publicly filed at the Securities Exchange Commission.

1 have no authority to use cash collateral to pay rent under the Master Lease in December (or  
2 presumably thereafter) and will, therefore, be forced to default under the Master Lease or to seek  
3 appropriate relief from the Bankruptcy Court.

4           33. Agreement to Compromise: The essential terms of the compromise are set  
5 forth in Section III(c) above, and more completely set out in the Compromise Agreement, which  
6 is incorporated herein by reference. PropCo, acting through its independent directors and its  
7 special counsel, and SCI, acting through its officers and counsel, have determined that, in light of  
8 the financial constraints placed on SCI by the Prepetition Lenders with regard to the SCI Budget  
9 and the refusal of the Prepetition Lenders to consent to SCI's payment of full rent in cash under  
10 the Master Lease, the payment of Reduced Rent and the treatment of the Deferred Rent as set  
11 forth in the Compromise Agreement is a prudent and necessary exercise of business judgment of  
12 both SCI and PropCo. The provisions of the Compromise Agreement in this regard enable the  
13 Debtors to operate effectively in chapter 11, while simultaneously preserving the rights of SCI  
14 and PropCo *vis a vis* payment of rent under the Master Lease until such time as SCI makes a  
15 decision to assume or reject the Master Lease either as part of a plan of reorganization or  
16 otherwise. Moreover, in light of the economic consequences to the Debtors' estates and to the  
17 operation of SCI's non-debtor subsidiaries if the Compromise Agreement is not approved and  
18 the Parties authorized to abide by it, the decision by SCI and by PropCo to enter into the  
19 Compromise Agreement is a proper exercise of business judgment which should be given  
20 deference and approved by this Court.

21           34. In short, both PropCo and SCI, with the advice of legal and financial  
22 counsel, have determined, in the reasonable exercise of their sound business judgment, that the  
23 compromise set forth in the Compromise Agreement provides the best possible opportunity for  
24 the Debtors to continue their efforts to negotiate a viable, confirmable plan of reorganization in  
25 an expeditious and effective manner, while at the same time protecting the respective rights of  
26 SCI and PropCo with respect to the Master Lease.



V. Legal Arguments.

A. **The Compromise Agreement Constitutes the Parties' Exercise of Business Judgment, Is Beneficial to the Estate and Should Be Approved under Bankruptcy Code Section 363(b)(1) and Bankruptcy Rule 9019.**

35. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts have required that such use, sale or lease be based upon a debtor's sound business judgment. *See, e.g., In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 980 (Bankr. W.D. Wash. 1997), *aff'd* 221 B.R. 243 (B.A.P. 9th Cir. 1998); *Matter of Plaza Family Partnership*, 95 B.R. 166, 173 (E.D. Cal. 1989); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). "The business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a debtor's management decisions").

36. In connection with decisions related to the use of leases to maximize value of the estate, courts show great deference to a debtor's business decisions. *See, e.g., In re Ernst Home Ctr., supra*, 209 B.R. 974. In *In re Ernst*, the debtor determined that it was unable to reorganize, but that the most prudent way to create value for the estate was to enter into a complex contractual arrangement with a third party to market a substantial number of the debtor's leases pursuant to which the leases would either be assumed by the third party or assigned to new end-users. The proposed transaction would guarantee the estate a minimum profit, but required, *inter alia*, a 14-month extension of the 365(d)(4) deadline and transferred control over marketing and decision-making concerning lease assignments to a non-debtor. *Id.* 209 B.R. at 978. The court approved the transaction because the debtor demonstrated an "articulated business justification" for the proposed arrangement and that the intended transaction was in best interests of estate. *Id.*; *see also, In re Trans World Airlines.*, 2001 Bankr. LEXIS 267 at \*45-50 (Bankr. D. Del. 2001) (describing business judgment rule as "very deferential



1 standard”); *In re First Wellington Canyon Assocs.*, 1989 U.S. Dist. LEXIS 10687 at \*8-9 (N.D.  
2 111. 1989) (“Under this test, the debtor’s business judgment . . . must be accorded deference  
3 unless shown that the bankruptcy’s decision was taken in bad faith or in gross abuse of the  
4 bankrupt’s retained discretion.”).

5 37. Courts grant particular deference to a debtor’s business judgment  
6 concerning the best way to make use of, and generate value from, unexpired nonresidential  
7 leases. In the ongoing chapter 11 cases of General Growth Properties, Inc., the debtors have  
8 sought relief related to the assumption and rejection of several unexpired leases of nonresidential  
9 property that provide the majority of the debtors’ revenue stream. Though the income from the  
10 leases in question makes up a portion of the security for the debtors’ secured credit facilities, the  
11 court recognized the proper exercise of the debtors’ business judgment and granted the debtors’  
12 motion. *In re General Growth Properties, Inc.*, 09-11977-ALG (Bankr. S.D.N.Y. April 16,  
13 2009). *See also National Labor Relations Board v. Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d  
14 Cir. 1982), *aff’d*, 465 U.S. 513 (1984) (“[t]he usual test for rejection of an executory contract is  
15 simply whether rejection would benefit the estate, the ‘business judgment’ test”); *In re*  
16 *Crystallin, LLC*, 293 B.R. 455, 464 (B.A.P. 8<sup>th</sup> Cir. 2003) (if the debtor establishes that rejection  
17 of an executory contract is of benefit to the estate, then the bankruptcy court should not interfere  
18 with the debtor’s business judgment except upon a finding of bad faith or gross abuse of business  
19 discretion, *citing Lubrizol*, 756 F.2d at 1046-47); *In re HQ Global Holdings, Inc.*, 290 B.R. 507,  
20 511 (Bankr. D. Del 2003) (the sole issue to consider when evaluating a motion to reject an  
21 executory contract under the business judgment test is whether the rejection will benefit the  
22 estate).

23 38. The business judgment test is not limited to decisions to assume or reject  
24 contracts or leases, but also to decisions to revise, modify or otherwise negotiate resolutions of  
25 issues relating to contractual obligations during a chapter 11 case. *In re Carter Hawley Hale*  
26 *Stores*, 1991 Bankr. LEXIS 2185 (Bankr. C.D. Cal. Oct. 24, 1991) (“Debtors and other parties to  
27 prepetition executory contracts and leases may agree to modify provisions thereof as part of a  
28 negotiated assumption so long as the contract, as modified, is approved by the Court and meets

1 the business judgment standard” (internal citations omitted)).

2 39. The terms of the Compromise Agreement are the product of extended and  
3 comprehensive negotiations between SCI and PropCo. Throughout the negotiation process, the  
4 Parties have worked diligently to ensure the needs of both sides regarding the Master Lease are  
5 met while balancing the new realities of SCI’s limited ability to use cash collateral with respect  
6 to the Master Lease rent payments. SCI has determined, in its business judgment, that the  
7 benefits to SCI of the Reduced Rent and the other protections provided to SCI under the  
8 Compromise Agreement are fair consideration for SCI’s agreement to provide the transition  
9 services and related protections required by PropCo. PropCo, on the other hand, acting through  
10 the Independent PropCo Directors, has determined, in its business judgment, that those transition  
11 services and related protections that PropCo has bargained for are fair consideration for  
12 PropCo’s agreement to accept the Reduced Rent and otherwise agree to the terms of the  
13 Compromise Agreement. Those business judgments were reached following extensive, arms’  
14 length negotiations between the Parties and reflect SCI’s and PropCo’s independent decisions  
15 that entry into the Compromise Agreement is in the best interests of each of their respective  
16 estates.

17 **B. Partial Deferral of the Rent Due under the Master Lease and the Other**  
18 **Accommodations and Remedies Regarding Performance of Obligations are**  
19 **Permissible under Section 365(d)(3) and in the Best Interests of the Estates.**

20 40. Section 365(d)(3) of the Bankruptcy Code provides that a debtor in  
21 possession “shall timely perform all the obligations . . . arising from and after the order for  
22 relief under any expired lease of nonresidential real property, until such lease is assumed or  
23 rejected, notwithstanding section 503(b)(1).” 11 U.S.C. 365(d)(3). This section protects  
24 landlords from being forced to provide current services to tenant-debtors without receiving  
25 current rent payments while the tenant-debtor determines whether to assume or reject the lease.  
26 130 Cong. Rec. § 8894-95 (daily ed. Jun 29, 1984). The compromises regarding current  
27 payment of rent and the other accommodations between the Parties do not run afoul of  
28 Congressional intent to protect PropCo in this Case. The Compromise Agreement is an arms’  
length, consensual arrangement, bargained for between the lessor and its lessee. PropCo has

1 willingly and in good faith negotiated the terms of the Compromise Agreement and is in no way  
 2 being “forced” to allow SCI to continue as lessee without paying fair consideration for that right.  
 3 Rather, PropCo has determined that the exchange of Reduced Rent and the other protections in  
 4 the Compromise Agreement that benefit SCI for SCI’s commitment to provide PropCo with  
 5 specified transition services and other benefits is a beneficial transaction for PropCo. Section  
 6 365(d)(3) was designed to provide “unwilling” landlords with protection against non-performing  
 7 lessees. This is not such a case.

8           41. To be clear, the Parties are not agreeing to forego rent, but rather to defer  
 9 it in a manner consistent with the prohibition on paying the December Rent as decreed by the  
 10 Prepetition Lenders as a condition to SCI’s use of Cash Collateral. Moreover, under the  
 11 Compromise Agreement, SCI is “paying” for the reduction of its current rent obligation by  
 12 agreeing to provide future transition services that PropCo is not currently entitled to receive  
 13 under the contracts between the Parties. The mutual decisions between SCI and PropCo to  
 14 modify their rights, remedies and obligations under Section 365, in the exercise of their business  
 15 judgment and in the best interests of the estates and creditors must be given deference. *See In re*  
 16 *National Sugar Refining Co.*, 21 B.R. 196 (Bankr. S.D.N.Y. 1982) (“Under the Bankruptcy Act,  
 17 a majority of the courts applied the “business judgment” test to determine whether a trustee  
 18 should be permitted to assume or reject an executory lease.”); *In re G Survivor Group*, 171 B.R.  
 19 755 (Bankr. S.D.N.Y. 1994) (“Generally, absent a showing of bad faith, or an abuse of business  
 20 discretion, the debtor’s business judgment will not be altered.”).

21       **C. The Compromise Agreement is an Appropriate Exercise of the Parties’**  
 22       **Business Judgment under Rule 9019.**

23           42. Compromises are favored in bankruptcy<sup>10</sup> and are a normal part of the  
 24 reorganization process. *Anderson*, 390 U.S. at 424, (*quoting Case v. Los Angeles Lumber Prods.*  
 25 *Co.*, 308 U.S. 106, 130 (1939)); *see also In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir.  
 26 1986) (“The law favors compromise and not litigation for its own sake . . .”). Pursuant to

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27  
 28 <sup>10</sup> 10 Collier on Bankruptcy, ¶ 9019.01, at 9019-2 (15th ed. rev. 2008) (*citing Marandas v. Bishop (In re Sassalos)*, 160 B.R. 646, 653 (D. Ore. 1993)).

1 Bankruptcy Rule 9019, in considering compromises, courts determine whether the compromise  
 2 in question is fair and equitable and in the best interests of the estate. *In re Mickey Thompson*  
 3 *Entertainment Group Inc.*, 292 B.R. 415, 420 (9th Cir. B.A.P. 2003) (“Although the bankruptcy  
 4 court has ‘great latitude’ in authorizing a compromise, it may only approve a proposal that is  
 5 ‘fair and equitable’ to the creditors” (internal citations omitted)); *see also Protective Comm. for*  
 6 *Ind. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Best*  
 7 *Prods. Co.*, 168 B.R. 35, 50 (Bankr. S.D.N.Y. 1994). Bankruptcy Rule 9019(a) commits the  
 8 approval or rejection of a compromise to the sound discretion of the bankruptcy court. *In re*  
 9 *Michael*, 183 B.R. 230, 232 (Bankr. D. Mont. 1995).

10 43. To determine whether a compromise satisfies the fair and equitable  
 11 standard, courts review four basic factors: “(a) The probability of success in the litigation; (b) the  
 12 difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the  
 13 litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the  
 14 paramount interest of the creditors and a proper deference to their reasonable views in the  
 15 premises.” *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988) (quoting *A & C Properties*, 784  
 16 F.2d at 1381).

17 44. In pursuing a compromise or settlement, the parties are not required to  
 18 reach the absolute maximum value for the estate. Rather, settlements should be approved if they  
 19 fall above the lowest point on the continuum of reasonableness. *In re W.T. Grant Co.*, 699 F.2d  
 20 599, 608 (2d Cir. 1983) (“responsibility of the bankruptcy judge . . . [is] to canvass the issues and  
 21 see whether the settlement fall[s] below the lowest point in the range of reasonableness”); *In re*  
 22 *Blair*, 538 F.2d 849, 851 (9th Cir. 1976) (Court should not conduct a “mini-trial” on the merits of  
 23 a proposed settlement); *In re Planned Protective Servs., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D.  
 24 Cal. 1991) (same).

25 45. Here, the Parties have been able to reach a compromise that solved a  
 26 multitude of potential problems. The primary objective was to avoid a premature and potentially  
 27 precipitous rejection of the Master Lease and the License Agreement. The issue of how to deal  
 28 with the Master Lease has been one of the main points of contention during these Cases – and

one on which almost every constituent has expressed its own views. Thus, SCI and PropCo were highly motivated to find a compromise that prudently and cost-effectively provides the Debtors with breathing room to determine how to deal with the Master Lease while simultaneously eliminating the risks and costs of an undesirable precipitous rejection of the Master Lease or bankruptcy filing of the Operating Subsidiaries and the concomitant complications from the absence of a program for transition services. The Compromise Agreement provides a road map on how to deal with the Master Lease up to and through March 12, 2010, while simultaneously preserving PropCo's interests in the Rental Payments for the Deferral Period and providing PropCo with the certainty of some transition services it contractually does not currently possess. The Compromise Agreement therefore addresses the needs of both Parties while maintaining value within the Debtors' estates. Finally, the Compromise leaves PropCo and SCI's current legal positions with regard to additional transition services unaffected. PropCo and its successor/assigns (including the PropCo Mortgage Lender) will continue to have the ability to argue for additional transition services while not limiting SCI from arguing that no additional transition services are required to be provided to PropCo. Under the circumstances, it is both fair and equitable, providing a far less tedious, time-consuming, and expensive outcome than would result from litigation over the Master Lease and Licensing Agreement.

46. In the absence of the Compromise Agreement, SCI would be left to either enter into a contested cash collateral battle with the Prepetition Lenders or reject the Master Lease in December. Either of these choices would force the Debtors into complex, difficult, uncertain and costly litigation at a time when it is critical that the Debtors and their stakeholders focus their attention on plan discussions and negotiations. The Compromise Agreement allows the Debtors to avoid that litigation at this time and will allow the parties to focus on plan issues, without prejudicing the rights of either SCI or PropCo should those plan efforts fail.

**D. The Consensual Extension of the Deadline to Assume or Reject the Master Lease Until March 12, 2009 Is in the Best Interests of the Debtors' Estates.**

47. To ensure that there is sufficient time to achieve the objectives of the Parties with regard to the Master Lease, and to provide sufficient breathing room for the Debtors

1 to try to formulate and achieve consensus among the parties in interest, the Parties have agreed to  
 2 extend the deadline for SCI to assume or reject the Master Lease up to and until the last day of  
 3 the deferral period under the Compromise Agreement, March 12, 2009. Such modification  
 4 represents the measured and prudent business decisions by the management of SCI and of  
 5 PropCo to extend the deadline to assume or reject the Master Lease to a date that matches up  
 6 with the term of the Compromise Agreement so that those agreements dovetail seamlessly.  
 7 Given PropCo's consent to that extension, the extension satisfies the consent requirement of  
 8 Section 365(d)(4)(B)(ii).<sup>11</sup> Generally, under standard interpretative concepts,  
 9 assumption/rejection deadline extensions are proper if: (i) the lessor continues to receive rental  
 10 payments; (ii) the lease is a primary asset of the debtor; (iii) the debtor has not had sufficient  
 11 time to intelligently appraise its financial situation and the potential value of its assets in terms of  
 12 the formulation of a plan; (iv) the case is exceptionally complex; (v) the property is not vacant  
 13 (thereby not prejudicing neighboring tenants); and (vi) the lessor is not damaged by the debtor's  
 14 continued occupation. *In re Victoria Station Inc.*, 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988), *aff'd*  
 15 *on other grounds*, 875 F.2d 1380 (9th Cir. 1989); *see also In re Ernst Home Ctr., Inc.*, 221 B.R.  
 16 243, 253 (B.A.P. 9th Cir. 1998) (similar list of factors). Without exception, each of these factors  
 17 has been satisfied (or consensually modified).

18  
 19  
 20 **E. The PropCo Lenders Will Continue To Be Adequately Protected After**  
 21 **Implementation Of The Compromise Agreement.**

22 48. Under the Compromise Agreement, provision for continued adequate  
 23 protection payments for the Mortgage Lenders has been made during the Deferral Period,  
 24 because Reduced Rent can never be less than 120% of all required adequate protection payments  
 25 due the Mortgage Lenders and their professionals. Further, the impact of the payment of  
 26

27  
 28 <sup>11</sup> PropCo previously consented by stipulation to extend the 365(d)(4) deadline to February 24, 2010. *See*  
 Exhibit B-3 to Docket No. 508.

1 Reduced Rent on the accumulation of cash collateral will be mitigated by the anticipated non-  
2 payment of the unsecured interest rate swap agreement that is currently being paid on a monthly  
3 basis by PropCo under the PropCo Cash Collateral Stipulation. All cash rent that otherwise  
4 would have been used to pay such swap payments will accumulate as cash collateral for the  
5 Mortgage Lenders if and when the swap payments cease. Moreover, providing PropCo with  
6 transition services it currently does not contractually possess for the rent deferral puts PropCo in  
7 a better position to address a subsequent rejection of the Master Lease and, therefore, provides  
8 the Mortgage Lenders adequate protection of its secured position.  
9

10 49. It is also important to note that although the Mortgage Lenders have a  
11 security interest in the Master Lease, pursuant to the Assignment of Master Lease, Subleases,  
12 Rents and Security Deposits dated November 7, 2007 and made by PropCo in favor of the  
13 Mortgage Lenders, Section 104A.2303(5) of the Nevada Revised Statutes limits the Mortgage  
14 Lenders' ability to exercise any control over the terms and duties under the Master Lease,  
15 because the assignment is deemed to be a mere security interest despite being phrased as an  
16 absolute assignment. The commentary to subsection (5) notes that the statute "states a rule of  
17 construction that distinguishes a commercial assignment, which substitutes the assignee for the  
18 assignor as to rights and duties, and an assignment for security or financing assignment, which  
19 substitutes the assignee for the assignor only as to rights." Accordingly, the nature of the  
20 assignment to the Mortgage Lenders only grants them contract rights to their secured interest in  
21 the value of the Master Lease, but not the ability to dictate the terms or otherwise exercise  
22 ownership of the Master Lease.  
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V. **Conclusion**

**WHEREFORE**, SCI and PropCo respectfully request that the Court approve the Compromise Agreement, authorize the Parties to perform their respective obligations thereunder and grant such other and further relief as the Court deems just and proper under the circumstances.

Dated: November 19, 2009

Respectfully submitted,

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